

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LORETTA J. RATKUS and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE DATA CENTER, Detroit, Mich.

*Docket No. 96-2378; Submitted on the Record;
Issued August 26, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly suspended appellant's compensation for failure to submit forms for reporting her financial status.

On August 9, 1988 appellant, then a 36-year-old supervisory classification specialist, was sliding in her chair when the wheels of the chair became caught in a tangle of computer wires, causing the chair to topple and appellant to fall, landing on her right shoulder. She stopped working on August 16, 1988. The Office accepted appellant's claim for traumatic bursitis of the right shoulder. Appellant received continuation of pay for intermittent periods during the period August 16 through October 22, 1988. Appellant worked intermittently through January 29, 1989 and then used sick and annual leave through February 27, 1989 when she began receiving temporary total disability compensation.

In a January 18, 1990 report, Dr. Jerome V. Ciullo, a Board-certified orthopedic surgeon, stated that an arthroscopic examination of the right shoulder which showed a rotator cuff tear at the supraspinatus-infraspinatus junction insertion, significant bursal scarring, an irregular glenohumeral ligament and subscapularis tendon. He reported that appellant had a multiaxial subluxation of the shoulder. On June 4, 1992 appellant underwent surgery for repair of the right shoulder. She filed a claim for injury to her left shoulder and underwent surgery for the left shoulder on August 20, 1992. Appellant underwent additional surgery on her right shoulder on June 2, 1994. On March 9, 1995 appellant received a schedule award for a 14 percent permanent impairment of the each arm. The Office indicated that the period of the award was from March 5, 1995 through November 5, 1996.

In a September 13, 1995 letter, the Office requested that appellant complete and submit a CA-1032 form to report on her employment and dependent status for the prior 15 months. The Office warned appellant that she must completely answer all questions and return the form within 30 days or her compensation would be suspended. In a November 9, 1995 letter, the Office made a second request for the information, stating that it had no record that she had

responded to the first request. The Office warned appellant that if it did not received the form by November 24, 1995, her compensation would be suspended to include her check for the period beginning November 12, 1995. The Office indicated that compensation would be reinstated once a CA-1032 form was submitted.

In a December 6, 1995 letter, appellant stated that she promptly completed and returned a CA-1032 form on September 19, 1995. She indicated that she was currently receiving a schedule award and contended, therefore, that she was not required to submit a CA-1032 because employment was permitted during the period she was receiving a schedule award. She also noted that she received the Office's letter on November 21, 1995 which gave her very little time to return the form by November 24, 1995. In a December 14, 1995 letter, an Office claims examiner indicated that the CA-1032 form was sent to anyone who did not have a CA-1032 form on file after the initial request for information. The claims examiner stated that it was mandatory that the Office issue a warning to complete the form. She apologized for the failure to process or file the original form she filed in September 1995. The claims examiner asked appellant to complete the second set of forms she had been sent. She stated that the CA-1032 form was required from anyone receiving compensation, even a schedule award, as it helped the Office to verify dependent status, which would affect schedule awards, and appellant's address and telephone number.

In a June 12, 1996 letter, the Office requested for a third time that appellant complete a CA-1032 form. It noted that for one reason or another her first two forms were not returned or not received. It indicated that the form was mandatory and that she was required to file the form on a yearly basis. The Office requested that the form be returned within 15 days. The Office stated that failure to return the form would result in suspension of appellant's compensation.

In a July 3, 1996 decision, the Office suspended appellant's compensation on the grounds that she had neglected to submit an affidavit or other report of earnings as required by Office regulations. The Office suspended compensation effective July 3, 1996.

The Board finds that the Office improperly suspended appellant's compensation.

Under the Office's regulations, an employee in receipt of compensation is required periodically to submit an affidavit or other report of earnings.¹ The regulations states that if an employee, when required, fails within 30 days of the date of the request to submit the affidavit or report, his or her right to compensation will be suspended until such time as he or she submits the affidavit or report. The regulations, as stated, apply to any request for the affidavit or report, and makes no distinction between a first request for the information and any subsequent requests for the same information for the same period after the first request has been made. In this case, the Office, in the second and third requests for the affidavit or report of earnings, gave appellant only 15 days to submit the requested CA-1032 form. The regulation requires that appellant be allowed 30 days to submit the requested information. After the third request for the information, the Office suspended appellant's compensation before appellant's 30-day period for responding had expired. The Office's action in suspending appellants' compensation was premature before

¹ 20 C.F.R. § 10.125(a).

the expiration of the 30-day period for submission of the material as requested. The Office's action in this case was therefore contrary to the time limit imposed by the regulation.

The decision of the Office of Workers' Compensation Programs dated July 3, 1996 is hereby reversed.

Dated, Washington, D.C.
August 26, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member